

REMARKS

This is in response to the Office Action mailed on May 25, 2006. The Office Action withdrew claims 14 and 15 and rejected claims 1, 2, 4 and 5. Applicant has amended claim 1 and cancelled claims 14 and 15 with this amendment. The application currently includes claims 1, 2, 4 and 5. Applicant also is submitting the Declaration of David Majkrzak to support the fact that the claimed invention is not obvious.

The Office Action rejected independent claim 1 under 35 U.S.C. §112, second paragraph, and alleges that the claim language "in the range of 14%" does not clearly set forth the meets and bounds of the patent protection desired. Applicant has amended independent claim 1 to define the cutting red line to be about 14% of the length of the straight line. The term "about" has been determined to particularly point out and distinctly claim the subject matter with which Applicant regards as the invention. See M.P.E.P. §2173.05(b). Therefore, Applicant respectfully requests that the rejection of amended independent claim 1 under 35 U.S.C. §112, second paragraph, be withdrawn.

The Office Action rejected independent claim 1 under 35 U.S.C. §103(a) as being unpatentable over French Patent No. 2,595,190 (hereinafter the Poget patent) in view of U.S. Patent No. 172,736 (hereinafter the Henderson patent). The Office Action alleges that the Poget patent discloses all of the elements of independent claim 1 except for the claim elements of the side edges of the base having a length between 40% and 50% of a distance from the base edge to the leading end and where the cutting edge is serrated. The Office Action alleges that the Henderson patent discloses a knife section (A) with a serrated cutting edge where the side edges of the base have a length between 40% and 50% of a distance from the base edge to the leading edge. The Office Action alleges that it would have been

obvious to one of ordinary skill in the art at the time the invention was made to include the side edges of the Henderson patent on the knife section of the Poget patent in order to enable easy handling for sharpening.

Applicant respectfully disagrees that the Poget patent in view of the Henderson patent makes independent claim 1 obvious. Applicant submits that the Office Action has failed to establish a prima facie case of obviousness because neither the Poget patent or the Henderson patent disclose a cutting line of the sickle section being about 14% of the length of the straight line as claimed.

The Examiner has the burden of establishing a prima facie case of obviousness. In order to establish a prima facie of obviousness of a claimed invention, all of the claim limitations must be taught or suggested by the prior art. In re Royka, 490F.2d 981, 180 USPQ 580 (CCPA 1974). Further, all of the words in a claim must be considered in judging the patentability of the claim against the prior art. In re Wilson, 424F.d 1382, 165 USPQ 494 (CCPA 1970). While the Poget patent does show a slightly curved cutting edge, there is no disclosure in the Poget patent of a cutting line of a sickle section being about 14% of the length of the straight line as claimed. Therefore, the Office Action fails to establish a prima facie case of obviousness.

Further, the design of the sickle section as claimed provides unique harvesting features including a high capacity, high efficiency sickle section that is utilized to cut soybeans and small grain including wheat and oats. (Declaration of David Majkrzak (Majkrzak Decl.), ¶¶ 3, 4. The concave cutting edges increase the cutting capacity of the cutting bar relative to the cutting bar having sickle sections with straight cutting edges because the area between the cutting edges is increased. This increase capacity allows the cutting or the harvester to move more quickly through a field to reduce the time required to harvest a

crop. (Majkrzak Decl., ¶¶ 12, 16, Exhibit C). Providing a high efficiency, high capacity sickle section meets a long felt need of the reduction of time to harvest crops.

Further, the claimed sickle sections have been surprisingly found to work very efficiently in no till or minimum till crops where a crop is planted into the prior crop's residue. (Majkrzak Decl., ¶¶ 6-8). When a crop is planted into cornstalks, there are difficulties in harvesting small grain and soybeans due to the condition of the upright stalks (Majkrzak Decl., ¶¶ 9-11). Many sickle sections utilized on a cutting bar are not able to cut through these dried hardened stalks having the consistency of wood and the sections tend to become damaged or broken which causes down time of the harvester for repair. The claimed sickle section has surprisingly been found capable of cutting cornstalks including genetically altered stalks of corn which are even more hard than a normal corn stalk due to their ability to resist cornborers. ((Majkrzak Decl., ¶ 15, Exhibit B). Therefore, the design of the present invention has surprisingly been found to be beneficial in harvesting crops in no tillage and minimum tillage fields.

Further, the dealers who have been selling the sickle section defined in claim 1 have had an increase in sales due to the performance of the machines. (Majkrzak Decl., ¶ 14, Exhibit A). Therefore, the assignee of the present invention has seen commercial success in the product defined in the present invention. All of these factors show that independent claim 1 is not obvious over the Poget patent in view of the Henderson patent.

Further, the combination of the Poget patent with the Henderson is improper as the Office Action has used the claimed invention as a guide because there is no teaching, motivation or suggestion to combine the references. In In re Dembiczak, 175F.3d 994, 50 USPQ 2d 1614 (Fed. Cir. 1999), the Federal Circuit emphasize the fact, to reject an inventor's claim for obviousness

in view of the combination of prior art references, a showing of a suggestion, teaching or motivation must be "clear and particular". The mere fact that prior art can be modified does not make the modification obvious unless the prior art taught or suggested the desirability of the modification. In re Gordon, 221 USPQ 1125 (Fed. Cir. 1984).

The Poget patent relates to an anti-clogging sickle section. Because of the shape of a concavity 1 at its center, a vibration is created during the movement of the cutting bar which causes the stalks to rise into a harvester. The Henderson patent relates to a cutting bar made up of two separate bars that are combined together to make the sharpening of the sickle sections easier. There is no teaching in either patent for the combination of the references to allege that a high capacity sickle section as claimed in claim 1 is obvious.

Further, the purpose for each of the references alleged to make the claimed invention in claim 1 obvious are different from the purpose of claimed invention. Claim 1 defines a sickle section that provides an increase feed area for crop material that is cut which increases the efficiency and capacity of a cutting bar.

In contrast, the Poget patent relates to a sickle section which causes vibration which prevents clogging. The Henderson patent relates to cutting bar that can be separate into two bars to provide access for easily sharpening the sickle sections. See in re Clay, 966F.2d 656, 659-60 (Fed. Cir. 1992) (A reference that discloses the same purpose as the claimed invention relates to the same problem and that fact support the use of the reference in an obviousness rejection.) Neither reference addresses a purpose of the claimed invention where the area between the cutting edges of the sickle sections is increased to provide a higher capacity cutting bar that increases the efficiencies and speed at which a harvester can be moved through a field while also having the structural integrity to withstand cornstalks in a no till or

minimum till harvesting application.

For the foregoing reason, Applicant submits that independent claim 1 is not made obvious by the Poget patent in view of the Henderson patent. Reconsideration and allowance of independent claim 1 are respectfully requested.


The Office Action also rejected dependent claims 2, 4 and 5 as being obvious over the Poget patent in view of the Henderson patent. Because independent claim 1 is believed to be in allowable form, dependent claims 2, 4 and 5 are also in allowable form. Reconsideration and allowance of dependent claims 2, 4 and 5 are respectfully requested. For the foregoing reasons Applicant believes the present application is in allowable form. Reconsideration and allowance of the present application are respectfully requested.

The Director is authorized to charge any fee deficiency required by this paper or credit any overpayment to Deposit Account No. 23-1123.

Respectfully submitted,

WESTMAN, CHAMPLIN & KELLY, P.A.

By:

  
\_\_\_\_\_  
Peter J. Ims, Reg. No. 48,774  
Suite 1400  
900 Second Avenue South  
Minneapolis, Minnesota 55402-3319  
Phone: (612) 334-3222 Fax: (612) 334-3312

PJI:rkp